DIRECT SELLING ASSOCIATION
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Office of the Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, DC 20554

Re: CC Docket No. 92-90

These comments are submitted on behalf of the Direct Selling Association (DSA) in response to the Notice of Proposed Rulemaking dated April 17, 1992, pursuant to the enactment of the Telephone Consumer Protection Act (TCPA) of 1991. Given the broad scope of the TCPA and the implementing Rulemaking, which seeks to balance the divergent interests of small and large businesses using the telephone, individual privacy rights and commercial free speech considerations, the Federal Communications Commission is to be commended for its reasoned initial approach to this complex subject.

By way of background, the Direct Selling Association (DSA) is the national trade association of 100 manufacturing and distributing companies which sell their products and services through four million self-employed Americans away from a fixed retail location. Our membership includes such household names as Avon Products, Inc., Amway Corporation, Encyclopaedia Britannica, Fuller Brush, Mary Kay Cosmetics, Inc., Shaklee Corporation, Tupperware, and like companies (a list of companies is attached with our submission). Their independent direct sellers market consumer products and services nationwide through "party plans," door-to-door or similar in-person sales methods.

Although direct sellers have never been considered by others and do not consider themselves "telemarketers," making only occasional, almost incidental use of the telephone to verify a product order, make an appointment, etc., the section of the Rulemaking dealing with "Telephone Solicitation to Residential Subscribers" (Section III, F, 1-2) could easily encompass even these limited uses of the telephone and we feel it necessary to comment. In doing so, we intentionally limit our comments to the alternatives that are before the Commission to possibly restrict telephone solicitation to residential subscribers, although we strongly share the Commission's tentative conclusion "that it is not in the public interest to eliminate this option for consumers." Based on the Commission's own records, with only 74 of 831 complaints received during all of 1991 having been generated by live

solicitations, DSA fundamentally believes that there is, indeed, an inherent difference between automatically generated and in-person calls, both in volume and potential intrusiveness.

With that as our basis for comment, DSA would now like to individually address the five distinct regulatory alternatives before the Commission to potentially restrict telephone solicitation. These alternatives, in the order listed in the Notice of Rulemaking are: 1) Databases, 2) Network Technologies, 3) Special Directory Markings, 4) Industry or Company No-Call Lists, or 5) Time of Day Restrictions.

National Database

It is our opinion that the national database alternative is the most onerous and potentially devastating of the telephone solicitation restrictions. Aside from our serious doubts about its overall feasibility, a national database alternative is objectionable because its substantial access and renewal costs fall equally on high volume "telemarketers" and the smallest of small businesses making only incidental use of the telephone. The average direct seller is a woman, working part-time out of her home to earn additional income to pay for Christmas gifts, family vacations, tuition, or simply to help make ends meet. She is attracted to direct selling for many reasons, not the least of which is the fact that the start-up costs required to begin a direct selling business are purposely kept at a minimum. The high cost of the database could have a chilling effect on the recruiting efforts of our member companies, and could significantly diminish the attractiveness of direct selling as a viable income source.

The TCPA expressly prohibits charging subscribers for being listed in the national database; accordingly, businesses making phone calls will likely be charged substantially for purchase, maintenance and upkeep of the list. The business start-up costs for a direct seller will be drastically increased simply because a "no-call" list must be purchased. Currently, one need only purchase a sales kit costing approximately $100 or less to get started as a direct seller; this cost would increase tenfold should direct sellers be required to purchase and maintain a national "no-call" list. Indeed, in Florida -- where subscribers are also charged -- telemarketers annually pay $1,600 for floppy disk copies and $1,000 for hard copies. This would be an extraordinarily large expense for a small direct selling business which only incidentally makes use of the telephone.

Similarly, we expect significant problems to arise if our companies obtain and maintain a single database listing and make multiple copies available to their respective salespeople. Given that the salesforce turnover rate in direct selling is approximately 100%, this would require our companies to reproduce many thousands of copies of the database for disbursement. Our companies would then face a tremendous administrative burden in making sure that each member of their field salesforce has an updated copy, and they would also bear any costs associated with maintenance, reproduction, and distribution.

The Commission has given thought to the Florida database as a model to be adopted on a national level, and has rightly noted the problems inherent with this model's application nationwide. In addition to the substantial costs which have already been noted, it should also be observed that the Florida list currently consists only of telephone numbers of listed subscribers (minus names and addresses) which provides virtually no guidance to anyone not having a criss-cross directory. Furthermore, it should be noted that subsequent to the enactment of the Florida database law, the legislature enacted an omnibus Telemarketing Act in 1991 which specifically excluded from the coverage under "commercial telephone solicitation" those phone calls made without the intent to complete and which do not complete a sales presentation, when the sales presentation is in fact completed at a later, face-to-face meeting. This specific exemption recognizes the vast differences between the incidental, occasional use of the phone by direct sellers and the repetitive calls made by large "boiler room" operations. We would commend such an outright exemption to the FCC should any restrictions on live-operator calls be warranted at all.

Network Technologies

Given many of the specifics of the direct selling industry -- such as the relatively high salesperson turnover rate, the nationwide dispersement of salespeople, and the local nature of their business activities -- it is clear that a telephone prefix plan would be impractical and unworkable when applied to our industry. Our salespeople often enter the business with short-term financial goals and leave the business once those goals have been met. Assigning specialized prefixes to these small, predominantly part-time business people -- who might be out of the business within a matter of months -- would create a massive administrative nightmare for all concerned. We share the Commission's misgivings that the telephone numbering plan could not support such a prefix "given that telemarketers can range from multi-billion dollar businesses to a myriad of smaller concerns across the country."

Industry-Based or Company Specific Do Not Call Lists

This regulatory alternative, although possibly workable in certain industries, is also problematic in the direct selling industry. Should an individual direct seller be told that a particular person does not wish to be called, this information would have to pass through numerous hands -- both in the field hierarchy and within the company -- before it could be processed, added to a company-wide list, reproduced, and disseminated to the salesforce. The entire process could conceivably take months, which in all likelihood could lead to residential subscribers being further contacted before other salespeople learn via the company of his preference not to be disturbed. Given the four million direct sellers nationwide who sell for one or more of our companies and the fact that 98% of our salespeople are self-employed and therefore not subject to the "control" inherent in a traditional master-servant relationship, an industry or company maintained "no-call" list is impractical. In addition, customer and salesperson lists compiled by direct selling companies are traditionally proprietary in nature, which could present problems in maintenance and dissemination of an industry-based "no-call" list.

Special Directory Markings

The essence of direct selling can be found in the local, neighborly selling focus emphasized by our companies. When direct sellers do use the phone, it is almost surely going to be a local call; she could easily consult her local phone directory prior to making that call to look for special "no phone solicitation" markings. Given this reality, it seems that this type of proposal would be the most effective and least costly method of guaranteeing residential privacy.

Time of Day Restrictions

DSA has long supported, at the state level, time of day phone solicitation restrictions from 9:00 p.m. until 9:00 a.m., and has already endorsed such restrictions for both in-person sales and telephone usage. This type of regulation would be virtually cost-free and simple to incorporate into our companies' sales policies and procedures. We foresee no problems in abiding by this type of regulation on a national basis.

Conclusion

Direct sellers do occasionally use the phone for a variety of reasons, yet the phone is not a primary focus of their business. Direct sellers are truly small, independent businesspeople who could be severely impacted by a number of the proposals currently being considered. It is our position that regulation of telephone solicitation is unnecessary. Should the Commission deem regulation needed, DSA is opposed to the establishment of a national database, network technologies, and industry-based or company specific "do not call" lists for all of the aforementioned reasons. We feel that the special directory markings alternative and time of day restrictions would be the least costly and most effective methods of phone solicitation restriction.

DSA urges the FCC to recognize the fundamental qualitative and quantitative difference between the incidental use of the telephone by direct sellers and the primary phone usage of true telemarketers. Accordingly, we support an exemption from coverage for the de minimis use of the phone by direct sellers, similar to the existing law in Florida and California. Should the Commission choose the database, prefix, or industry-based "no call list" standard, the following telephone usages should be exempted from coverage:

(1) Commercial telephone solicitation where the solicitation is an isolated transaction and not done in the course of repeated transactions of like nature.

(2) Commercial telephone solicitation by a person soliciting without the intent to complete and who does not complete the sales presentation during the telephone call, but who completes the sales presentation at a later face-to-face meeting between the solicitor and the prospective purchaser.

Such recognition by the Commission would alleviate the financial and red tape burdens which would be particularly onerous for our small businesses.

Thank you for your consideration of these comments.

Respectfully submitted,

D. Keith Hancock
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